

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014080596

AMENDED ORDER GRANTING  
PARTIAL MOTION TO DISMISS

On August 13, 2014, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming the Irvine Unified School District as the respondent. The complaint states that Student is seeking “appropriate relief under the IDEA [Individuals with Disabilities Education Act], as well as any and all relief available for the District’s violation of the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 [29 U.S.C. §§ 790 et seq.], and all other Federal laws protecting the rights of children with disabilities, to the same extent as if actions for violations of these statutes has been brought pursuant to the procedures under subsections (f) and (g) of 20 U.S.C. § 1415.”

On September 2, 2014, Irvine filed a Motion for Partial Dismissal, alleging that OAH is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973, Section 1983 of title 42 of the United States Code, the Constitution and “all other Federal laws protecting the rights of children with disabilities.”

On September 9, 2014, the undersigned administrative law judge issued an order granting Irvine’s partial motion to dismiss. On September 15, 2014, Student filed a motion for reconsideration on grounds that Student’s counsel had been unavailable during the pendency of the partial motion to dismiss to file an opposition. As part of its reconsideration motion, Student includes her opposition to Irvine’s partial motion to dismiss. On September 15, 2014, the undersigned ALJ granted Student’s motion for reconsideration.

APPLICABLE LAW

The purpose of the IDEA (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the

provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Thus, OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code or other federal laws.

## DISCUSSION AND ORDER

In her complaint, Student makes two allegations. The first contends that Irvine has denied her a FAPE for school year 2014-2015 by failing to offer placement in the least restrictive environment to address Student’s academic and social deficits with appropriate services and supports. The second allegation contends that Irvine deprived Student of a FAPE by its failure to include her general education teacher in the Individualized Education Program process.

Student avers that her claims contained in the two allegations are pursuant to the IDEA and concomitant provisions of the California Education Code (Ed. Code, §§ 56000 et seq.). Student also states that she is seeking relief for the denial of FAPE under the IDEA, “as well as any relief available for the District’s violation of the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 [29 U.S.C. §§ 790 et seq.] and all other Federal laws protecting the rights of children with disabilities, insofar as such relief is available under the IDEA.”<sup>1</sup>

Thus, Student has alleged two allegations with claims pursuant to the IDEA and concomitant provisions of the California Education Code, as well as, claims under the provisions of the Section 1983, ADA, and Title V, plus other unidentified Federal laws.

Here, as set forth above, Student’s complaint raises claims that are outside the jurisdiction of OAH. The District’s Partial Motion to Dismiss all claims made pursuant to Section 504 of the Rehabilitation Act of 1973, Section 1983 of title 42 of the United States Code and the Constitution and other Federal laws is GRANTED. All such claims are hereby dismissed. The matter will proceed as scheduled as to Student’s two allegations pursuant to the IDEA only.

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<sup>1</sup> Complaint, pp. 2-3.

IT IS SO ORDERED.

DATE: September 15, 2014

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings